

115TH CONGRESS
1ST SESSION

S. 972

To promote democracy and the rule of law on Nicaragua, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 27, 2017

Mr. CRUZ (for himself, Mr. RUBIO, and Mr. PERDUE) introduced the following bill; which was read twice and referred to the Committee on Foreign Relations

A BILL

To promote democracy and the rule of law on Nicaragua,
and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Nicaraguan Invest-
5 ment Conditionality Act (NICA) of 2017”.

6 **SEC. 2. FINDINGS.**

7 Congress makes the following findings:

8 (1) In 2006, Nicaragua, under President
9 Enrique Bolaños, entered into a \$175,000,000, 5-

1 year compact with the Millennium Challenge Cor-
2 poration (MCC).

3 (2) After the 2008 municipal elections, the
4 MCC stated that there was a pattern of decline in
5 political rights and civil liberties in Nicaragua.

6 (3) In 2009, the MCC terminated the compact
7 and reduced the amount of MCC funds available to
8 Nicaragua by \$61,500,000, which led to the compact
9 ending in 2011.

10 (4) According to Nicaraguan law, the National
11 Assembly is the only institution allowed to change
12 the constitution, but in 2009, Daniel Ortega cir-
13 cumvented the legislature and went to the Supreme
14 Court, which he controls, to rule in his favor that
15 Presidential term limits were inapplicable.

16 (5) The Committee on Foreign Affairs of the
17 House of Representatives convened a congressional
18 hearing on December 1, 2011, entitled “Democracy
19 Held Hostage in Nicaragua: Part 1” where former
20 United States Ambassador to Nicaragua Robert Cal-
21 lahan testified “[f]irst, that Daniel Ortega’s can-
22 didacy was illegal, illegitimate, and unconstitutional;
23 second, that the period leading to the elections and
24 the elections themselves were marred by serious
25 fraud; third, that Daniel Ortega and his Sandinista

1 party have systematically undermined the country's
2 fragile governmental institutions".

3 (6) From fiscal year 2012 until present, the
4 Department of State found that the Government of
5 Nicaragua did not meet international standards of
6 fiscal transparency.

7 (7) On January 25, 2012, a press statement
8 from Secretary of State Hillary Clinton stated, "As
9 noted by international observers and Nicaraguan
10 civil society groups, Nicaragua's recent elections
11 were not conducted in a transparent and impartial
12 manner, and the entire electoral process was marred
13 by significant irregularities. The elections marked a
14 setback to democracy in Nicaragua and undermined
15 the ability of Nicaraguans to hold their government
16 accountable.".

17 (8) According to the Department of State's
18 2015 Fiscal Transparency Report: "Nicaragua's fis-
19 cal transparency would be improved by including all
20 off-budget revenue and expenditure in the budget,
21 auditing state-owned enterprises, and conducting a
22 full audit of the government's annual financial state-
23 ments and making audit reports publicly available
24 within a reasonable period of time.".

1 (9) According to the Department of State's
2 Country Reports on Human Rights Practices for
3 2015: "In 2011 the Supreme Electoral Council
4 (CSE) announced the re-election of President Daniel
5 Ortega Saavedra of the Sandinista National Libera-
6 tion Front (FSLN) in elections that international
7 and domestic observers characterized as seriously
8 flawed. International and domestic organizations
9 raised concerns regarding the constitutional legit-
10 imacy of Ortega's re-election. The 2011 elections
11 also provided the ruling party with a supermajority
12 in the National Assembly, allowing for changes in
13 the constitution, including extending the reach of ex-
14 ecutive branch power and the elimination of restric-
15 tions on re-election for executive branch officials and
16 mayors. Observers noted serious flaws during the
17 2012 municipal elections and March 2014 regional
18 elections."

19 (10) According to the Department of State's
20 Country Reports on Human Rights Practices for
21 2015 in Nicaragua: "The principal human rights
22 abuses were restrictions on citizens' right to vote;
23 obstacles to freedom of speech and press, including
24 government intimidation and harassment of journal-
25 ists and independent media, as well as increased re-

1 striction of access to public information, including
2 national statistics from public offices; and increased
3 government harassment and intimidation of non-
4 governmental organizations (NGOs) and civil society
5 organizations”.

6 (11) The same 2015 report stated: “Additional
7 significant human rights abuses included consider-
8 ably biased policies to promote single-party domi-
9 nance; arbitrary police arrest and detention of sus-
10 pects, including abuse during detention; harsh and
11 life-threatening prison conditions with arbitrary and
12 lengthy pretrial detention; discrimination against
13 ethnic minorities and indigenous persons and com-
14 munities.”.

15 (12) In February 2016, the Ortega regime de-
16 tained and expelled Freedom House’s Latin America
17 Director, Dr. Carlos Ponce, from Nicaragua.

18 (13) On June 3, 2016, the Nicaraguan Su-
19 preme Court, which is controlled by Nicaragua’s
20 leader, Daniel Ortega, instructed the Supreme Elec-
21 toral Council not to swear in Nicaraguan opposition
22 members to the departmental and regional electoral
23 councils.

24 (14) On June 5, 2016, regarding international
25 observers for the 2016 Presidential elections, Presi-

1 dent Ortega stated, “Here, the observation ends. Go
2 observe other countries . . . There will be no obser-
3 vation, neither from the European Union, nor the
4 OAS . . .”.

5 (15) On June 7, 2016, the Department of
6 State’s Bureau of Democracy, Human Rights and
7 Labor posted on social media: “Disappointed govern-
8 ment of Nicaragua said it will deny electoral observ-
9 ers requested by Nicaraguan citizens, church, and
10 private sector . . . We continue to encourage the
11 government of Nicaragua to allow electoral observers
12 as requested by Nicaraguans.”.

13 (16) On June 14, 2016, President Ortega ex-
14 pelled three United States Government officials (two
15 officials from U.S. Customs and Border Protection
16 and one professor from the National Defense Uni-
17 versity) from Nicaragua.

18 (17) On June 29, 2016, the Department of
19 State issued a Nicaragua Travel Alert which stated,
20 “The Department of State alerts United States citi-
21 zens about increased government scrutiny of for-
22 eigners’ activities, new requirements for volunteer
23 groups, and the potential for demonstrations during
24 the upcoming election season in Nicaragua . . . Nic-
25 araguan authorities have denied entry to, detained,

1 questioned, or expelled foreigners, including United
2 States Government officials, academics, NGO work-
3 ers, and journalists, for discussions, written reports
4 or articles, photographs, and/or videos related to
5 these topics. Authorities may monitor and question
6 private United States citizens concerning their ac-
7 tivities, including contact with Nicaraguan citizens.”.

8 (18) On August 1, 2016, the Department of
9 State issued a press release to express grave concern
10 over the Nicaraguan government limiting democratic
11 space leading up to the elections in November and
12 stated, “[O]n June 8, the Nicaraguan Supreme
13 Court stripped the opposition Independent Liberal
14 Party (PLI) from its long recognized leader. The
15 Supreme Court took similar action on June 17 when
16 it invalidated the leadership of the Citizen Action
17 Party, the only remaining opposition party with the
18 legal standing to present a presidential candidate.
19 Most recently, on July 29, the Supreme Electoral
20 Council removed 28 PLI national assembly members
21 (16 seated and 12 alternates) from their popularly-
22 elected positions.”.

23 (19) On November 7, 2016, the Department of
24 State issued a press release stating, “The United
25 States is deeply concerned by the flawed presidential

1 and legislative electoral process in Nicaragua, which
2 precluded the possibility of a free and fair election
3 on November 6. In advance of the elections, the Nic-
4 araguan government sidelined opposition candidates
5 for president, limited domestic observation at the
6 polls and access to voting credentials, and took other
7 actions to deny democratic space in the process. The
8 decision by the Nicaraguan government not to invite
9 independent international electoral observers further
10 degraded the legitimacy of the election.”.

11 (20) In November and December of 2016, the
12 Board of Executive Directors of the Inter-American
13 Development Bank postponed consideration of a pol-
14 icy-based loan of \$65,000,000 to the Government of
15 Nicaragua due to the efforts of the United States
16 mission that expressed serious concerns of the ab-
17 sence of transparency, systemic corruption, and the
18 lack of free and fair elections in Nicaragua.

19 (21) On February 2017, the European Par-
20 liament issued a resolution on the situation of
21 human rights and democracy in Nicaragua and ex-
22 pressed concern of the “deteriorating human rights
23 situation in Nicaragua and deplores the attacks and
24 acts of harassment to which human rights organiza-
25 tions and their members and independent journalists

1 have been subjected by individuals, political forces
2 and bodies linked to the State.”.

3 (22) According to the Department of State’s
4 Country Reports on Human Rights Practices for
5 2016: “actions by the ruling Sandinista National
6 Liberation Front (FSLN) party resulted in de facto
7 concentration of power in a single party, with an au-
8 thoritarian executive branch exercising significant
9 control over the legislative, judicial, and electoral
10 functions.”.

11 (23) According to the Department of State’s
12 Country Reports on Human Rights Practices for
13 2016 in Nicaragua: “The November 6 elections for
14 president, vice president, national assembly mem-
15 bers, and representatives for the Central American
16 parliament did not meet the conditions of being free
17 and fair . . . The November 6 presidential and leg-
18 islative elections were marred by allegations of insti-
19 tutional fraud and the absence of independent oppo-
20 sition political parties. National observers and oppo-
21 sition leaders claimed rates of abstention from 60 to
22 70 percent.”.

23 (24) According to the Department of State’s
24 Country Reports on Human Rights Practices for
25 2016: “Companies reported that bribery of public of-

1 ficials, unlawful seizures, and arbitrary assessments
2 by customs and tax authorities were common . . .
3 The courts remained particularly susceptible to
4 bribes, manipulation, and other forms of corruption,
5 especially by the FSLN, giving the sense that the
6 FSLN heavily influenced CSJ and lower-level court
7 actions.”.

8 **SEC. 3. STATEMENT OF POLICY.**

9 It is the policy of the United States to support—

10 (1) the rule of law and an independent judiciary
11 and electoral council in Nicaragua;

12 (2) independent pro-democracy organizations in
13 Nicaragua;

14 (3) free, fair, and transparent elections under
15 international and domestic observers in Nicaragua;
16 and

17 (4) anti-corruption and transparency efforts in
18 Nicaragua.

19 **SEC. 4. INTERNATIONAL FINANCIAL INSTITUTIONS.**

20 (a) IN GENERAL.—The President shall instruct the
21 United States Executive Director at each international fi-
22 nancial institution to use the voice, vote, and influence of
23 the United States to oppose any loan for the benefit of
24 the Government of Nicaragua, other than to address basic
25 human needs or promote democracy, unless the Secretary

1 of State certifies and reports to the appropriate congres-
2 sional committees that the Government of Nicaragua is
3 taking effective steps to—

4 (1) hold free, fair, and transparent elections
5 overseen by credible domestic and international elec-
6 toral observers;

7 (2) promote democracy, as well as an inde-
8 pendent judicial system and electoral council;

9 (3) strengthen the rule of law;

10 (4) respect the right to freedom of association
11 and expression;

12 (5) combat corruption, including investigating
13 and prosecuting government officials credibly alleged
14 to be corrupt; and

15 (6) to protect the right of political opposition
16 parties, journalists, trade unionists, human rights
17 defenders, and other civil society activists to operate
18 without interference.

19 (b) REPORT.—The Secretary of the Treasury shall
20 submit to the appropriate congressional committees a
21 written report assessing—

22 (1) the effectiveness of the international finan-
23 cial institutions in enforcing applicable program
24 safeguards in Nicaragua; and

1 (2) the effects of the matters described in sec-
 2 tion 2 on long-term prospects for positive develop-
 3 ment outcomes in Nicaragua.

4 (c) DEFINITIONS.—In this section:

5 (1) APPROPRIATE CONGRESSIONAL COMMIT-
 6 TEES.—The term “appropriate congressional com-
 7 mittees” means—

8 (A) the Committee on Foreign Relations,
 9 the Committee on Appropriations, and the
 10 Committee on Banking, Housing, and Urban
 11 Affairs of the Senate; and

12 (B) the Committee on Foreign Affairs, the
 13 Committee on Appropriations, and the Com-
 14 mittee on Financial Services of the House of
 15 Representatives.

16 (2) INTERNATIONAL FINANCIAL INSTITU-
 17 TION.—The term “international financial institu-
 18 tion” means—

19 (A) the International Monetary Fund;

20 (B) the International Bank for Recon-
 21 struction and Development;

22 (C) the European Bank for Reconstruction
 23 and Development;

24 (D) the International Development Asso-
 25 ciation;

1 (E) the International Finance Corporation;

2 (F) the Multilateral Investment Guarantee

3 Agency;

4 (G) the African Development Bank;

5 (H) the African Development Fund;

6 (I) the Asian Development Bank;

7 (J) the Inter-American Development Bank;

8 (K) the Bank for Economic Cooperation

9 and Development in the Middle East and North

10 Africa; and

11 (L) the Inter-American Investment Cor-

12 poration.

13 (d) TERMINATION.—This section shall terminate on

14 the day after the earlier of—

15 (1) the date on which the Secretary of State

16 certifies and reports to the appropriate congressional

17 committees that the requirements of subsection (a)

18 have been met; or

19 (2) 5 years after the date of the enactment of

20 this Act.

21 (e) WAIVER.—The President may waive the require-

22 ments of this section if the President determines that such

23 a waiver is in the national interest of the United States.

1 **SEC. 5. ORGANIZATION OF AMERICAN STATES.**

2 (a) FINDINGS.—Congress finds that, according to the
3 Organization of American States (OAS) report on the Nic-
4 araguan 2011 Presidential elections, “Nicaragua: Final
5 Report, General Elections, OAS (2011)”, the OAS made
6 the following recommendations to the Government of
7 Nicaragua:

8 (1) Prepare alternative procedures for updating
9 the electoral roll when a registered voter dies.

10 (2) Publish the electoral roll so that new addi-
11 tions, changes of address, and exclusions can be
12 checked.

13 (3) Reform the mechanism for accreditation of
14 poll watchers using a formula that ensures that the
15 political parties will have greater autonomy to ac-
16 credit their respective poll watchers.

17 (4) Institute regulations to ensure that party
18 poll watchers are involved in all areas of the elec-
19 toral structure, including the departmental, regional,
20 and municipal electoral councils and polling stations.
21 Rules should be crafted to spell out their authorities
22 and functions and the means by which they can ex-
23 ercise their authority and perform their functions.

24 (5) Redesign the CSE administrative structure
25 at the central and field levels, while standardizing
26 technical and operational procedures, including the

1 design of control mechanisms from the time registra-
2 tion to the delivery of the document to the citizens;
3 the process of issuing identity cards should be timed
4 to the calendar and, to avoid congestion within the
5 process, be evenly spaced.

6 (b) ELECTORAL OBSERVATION MISSION.—The Presi-
7 dent shall direct the United States Permanent Represent-
8 ative to the Organization of American States (OAS) to
9 use the voice, vote, and influence of the United States at
10 the OAS to strongly advocate for an Electoral Observation
11 Mission to be sent to Nicaragua in 2017.

12 **SEC. 6. STATEMENT OF POLICY.**

13 The Department of State and the United States
14 Agency for International Development should prioritize
15 foreign assistance to the people of Nicaragua to assist civil
16 society in democracy and governance programs, including
17 human rights documentation.

18 **SEC. 7. REPORT ON CORRUPTION IN NICARAGUA.**

19 (a) REPORT REQUIREMENT.—Not later than 90 days
20 after the date of the enactment of this Act, the Secretary
21 of State, in consultation with the intelligence community
22 (as defined in section 3(4) of the National Security Act
23 of 1947 (50 U.S.C. 3003(4))), shall submit to Congress
24 a report on the involvement of senior Government of Nica-
25 ragua officials, including members of the Supreme Elec-

1 toral Council, the National Assembly, and the judicial sys-
2 tem, in acts of public corruption or human rights viola-
3 tions in Nicaragua.

4 (b) FORM.—The report required in subsection (a)
5 shall be submitted in unclassified form, but may contain
6 a classified annex. The unclassified portion of the report
7 shall be made available to the public.

○